EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

92-189

Supreme Court, U.S.
FILED
JUL 21 1992
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIAM E. BLAKE - PETITIONER

VS.

HONOABLE LAWRENCE KAPLAN
ALLEGHENY COUNTY COURT OF COMMON PLEAS
GARY STOUT
HOWARD HANNA INC.
BARRISTERS LAND ABSTRACT CO.
FRED THOMPSON
JOAN M. CALLERY
MARTHA M. BLAKE
FIRM OF GOLDBERG AND KAMIN
ROBERT J. GARVIN - RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM E. BLAKE, PRO SE
335 JEFFERSON ST. APT. B
BROOKVILLE, PA. 15825
(814) 849-5599

69

QUESTIONS PRESENTED FOR REVIEW

1. DID THE COURT OF APPEALS FOR THE THIRD CIRCUIT ERR in affirming the District Courts decision to grant a Rule 12(6) motion to Dismiss Petitioner's Complaint based on the grounds of failure to state a claim when facts existed to support a claim for collusion and extortion under color of law?

2. Under a Rule 12 Motion to dismiss for failure to state a claim upon which relief can not be granted, can the court dismiss the action if there are a set of facts in support of Petitioner's claim which would entitle him to relief?

3. Does a Judge and a Court Administrator of Allegheny County

Family Division Court have judicial immunity when they knowingly engaged in dubious, if not illegal and unethical practices?

The Courts below held yes. The Western District believes doctrine of judicial immunity applies no matter what the facts were. The Western District denied [illegible] this situtation.

PARTIES TO THE PROCEEDINGS IN THE COURTS BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Third Circuit.

See Rules of the Supreme Court No. 21.1(b).

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW....i

PARTIES TO THE PROCEEDINGS.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITY.....iv

REFERENCE TO REPORT.....1

CONCISE STATEMENT OF GROUNDS
FOR INVOKING JURISDICTION OF
THE SUPREME COURT.....2

JURISDICTION.....3

STATUTORY PROVISIONS INVOLVED.....3

STATEMENT OF CASE.....5

DECISION BELOW.....14

REASONS FOR GRANTING THE WRIT....16

CONCLUSION.....28

Appendix:

Decision of United States
District Court of Appeals for
the Third Circuit April 23,
1992.....A-29

Decision and Opinion of the
United States Court for the
Western District of Penna.
dated October 24, 1991.....B-31

Order of Court dated October
24, 1991.....C-61

TABLE OF AUTHORITIES

Cases:

Stump v. Sparkman, 435 US 349, 98 S.Ct. 1099.....15,27

Jenkins v. McKeithen, 395 US 411 (1969).....18

Kochiacs v. Local Bd. No 92, C.A. III. (1973), 476 F.2d 557.....19

Swartz v. Eberly, D.C.Pa.. (1962), 212 F.Supp 32.....19

Forrester v. White, 484 US, 108 S. Ct. 98 L.Ed 555 (1988)...21

Melo v. Hafer, 912 F.2d 628, (3rd Cir. 1990).....21

Shore v. Howard, 414 F. Supp. 379.....21

United States of America v. Gerald Minsky --- F.2d---, 1992, WL 91330 (6th Cir. Ky.).....23

United States v. Cronic, 466 U.S. 648, 659.....24

Haller v. Robbins, 409 F2d 857, 859 (1st Cir. 1969).....24

United States v. Early, 746 F.2d. 412, 416 (8th Cir. 1984).....24

Bevins v. Six Unkown Agents, 403 U.S. 388, 394-395, 29 L.Ed. 619, 91 S.Ct. 1999.....25

Bell v. Hood, 327 US at 684, 90 L.Ed at 911 13 Slr 2d. 383.....25

REFERENCE TO REPORTS

To the best of knowledge, information, and belief of the Petitioners herein, the opinions and decision of the Courts below have not been reported in any reporters, officially or unofficially.

CONCISE STATEMENT OF GROUNDS FOR INVOKING JURISDICTION OF THE SUPREME COURT

(i) The judgment sought to be reviewed is the Judgment Order of the United States Court of Appeals for the Third Circuit affirming the dismissal of the complaint filed in this case by the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. The date of said judgment order was April 23, 1992.

(ii) No extension of time for the filing of this petition for a writ of certiorari has been applied for or granted.

(iii) No cross petition has been filed in this case, to the best knowledge, information, and belief.

(iv) The statutory and/or Constitutional provision which, in the opinion of the Petitioners, is believed to confer jurisdiction for review in the Supreme Court of the United States is Article III of the Constitution of the United States of America and 28 USC $1254 (1).

TEXT OF STATUTORY PROVISION:

28 USC 1983:

Every person who, under color of and statute, ordinance, regulation, custom, or usage, of any State or Territory or the

District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action a law, suit in equity, or other proper proceedings for redress.. For the purposes of this section, an Act of Congress of application exclusively to the District of Columbia shall be considered to be a statue of the District of Columbia.

STATEMENT OF THE CASE

The plaintiff in this action is William E. Blake, who is a private citizen having a residence in Brookville, Jefferson County, Pennsylvania.

The defendants in this case are Honorable Lawrence Kaplan, an unethical Judge of the Family Division Courts of Allegheny County dedicated to the systematic plunder of litigants who enter his courtroom who is personally involved in the execution and orchestration of its crimes. Gary Stout, a court administrator for the Family Division Courts of Allegheny County who accepts favors and does favors for the purpose to

collect fees in the obstruction of justice through plunder, intimidation, collusion, and force. Gary Stout was not acting in a judicial capacity in any matter pending before him. Allegheny County Court of Common Pleas, the employer of Judge Kaplan and Gary Stout who in this case is the instrument for the denial of the civil rights of Blake without regard to the damage done by defendants Kaplan and Stout to the innocent plaintiff and to others. Howard Hanna Inc., Barristers Land Abstract Co., Fred Thompson, and Joan M. Callery, has attempted to perpetuate injustice and in this case has sought to promote injustice by, inter alia, making

false statements, and violating Pennsylvania Realestate statutes and law in the Court of Common Pleas of Allegheny County, Pennsylvania by fraudulently conveying property in collusion with the other defendants. Essentially the subornation of false swearing. Defendant Martha M. Blake, an Employee of Howard Hanna Realestate and the Plaintiff's ex-spouse attempted to perpetuate injustice by signing affidavits to false pleadings and made false statements to the Court of Common Pleas of Allegheny in order to steal the plaintiff's property. This was done in collusion with the other defendants without disregard to the damage

done to her employer and superiors to the innocent plaintiff and to others. Defendants Goldberg and Kamin and Robert Garvin, are attorneys intentionally violated the plaintiff's civil rights by violating Pennsylvania rules of court and conspired with Judge Kaplan and other judges of the Court of Common Pleas of Allegheny County in obstruction of justice, and other various crimes for the denial of the civil rights of Plaintiff Blake. Attorney Garvin had documented ex-parte conferences with Judge Kaplan and other judges from the Court of Common Pleas of Allegheny County and testified under oath that it was true.

Plaintiff Blake, in turn acting pro se filed a civil rights complaint at law naming the respondents as defendants. The allegations of the complaint were set forth in relevant part in a Civil Action # 90-1344 in the United States District Court for the Western District of Pennsylvania as follows:

> 14. Defendants conspired with state judges to steal Plaintiff's property and money in violation of due process of law and equal protection of the laws and Constitution of the United States. The private defendants acted in conspiracy to deprive Plaintiff of his constitutional rights under color of law.
>
> 17. Defendants Goldberg and Kamin and Robert Garvin are attorneys who practice before the Family Court of Allegheny County, Pennsylvania. Defendants have entered into a

> corrupt scheme with Honorable Lawrence Kaplan in which they pre-arranged and unlawfully manipulate the outcome of case, and manufacture fraudulent proceedings in order to unlawfully collect phoney attorney fees. Defendants have lied under oath, committed fraud and taken excessive funds through this unlawful activity. All of these activities are in violation of the law.
>
> 18. Defendants Stout, Hanna, Barristers, Thompson, Callery, and Martha Blake are all persons who have used, acquired, invested or derived income from the pattern of racketeering activity or through the collection of unlawful debts engaged in by Defendants Goldberg and Kamin, Robert Garvin and the Honorable Lawrence Kaplan.

The petitioners complaint was founded on the existence of Constitutional Deprivation of rights, seeking damages under Federal Law Title 42 of the United

States Code, sections 1983, 1985 and 1988. (42 U.S.C. 1983, 1985, 1986, and 1988) and Title 18 of the United Sates Code Sections 1961 and 1962 (18 U.S.C. 1961, 1962) not being limited to the virtue of Title 28 of United States Code. Sections 1331, 1332, 1343, 1450, an by Title 18, Section 1965, and a claim of infliction of emotional distress.

On October 24, 1991, Honorable Judge Ziegler issued an opinion and Order dismissing all claims for the Petitioner. The petitioner believes that the District Court committed clear error with it refusal to find there was a combination or conspiracy and that the participants acted with

illegal intent to extort under the color of law relevant to the issues. In a civil action for state law claims Honorable Judge Friedman dismissed preliminary objections of the defendants in the Court of Common Pleas of Allegheny County No. GD 91-12306, which stated in part:

> 52. Following the sale of Plaintiff and Defendant Martha Blake's properties, Defendants Barristers, Howard Hanna Realty Company, Garvin and Martha Blake refused to provide information regarding sale, in a further attempt to conceal the conversion of funds belonging to Plaintiff.

The conversion of funds was the result of the on going unethical practices of Honorable Lawrence Kaplan who appointed Gary Stout, a Court Administrator of the

Family Division Courts of Allegheny County, to protect the interest of the petitioner in a gross conflict of interest. This was in violation of certain Pennsylvania Realestate Laws and the Pennsylvania Rules of Court. Consequently a motion for civil contempt was entered in December 21, 1990 of which Judge Kaplan has refused to rule upon in obstruction of justice in order to protect the disobedient parties.

On October 24, 1991, Honorable Judge Ziegler issued an opinion and Order dismissing all claims for the petitioner. The petitioner believes that the district court committed clear error with its refusal to find

there was a combination or conspiracy based on the petitioners claim without the right to discovery in violation of the 5th Amendment of the Constitution ..."nor be deprived of life, liberty, or property, without due process of law," which is basis for federal jurisdiction.

On October 24, 1991 the petitioner filed a Notice of Appeal to the United States District Court for the Third Circuit which was dismissed on April 23, 1992, essentially for the reasons set forth in the opinion by Judge Ziegler.

THE DECISION BELOW

The Western District made up

facts against the petitioner to justify their opinion, and did not permit discovery in order to view all the facts in the light most favorable to Petitioner, as the Western District is compelled to do on a proceeding for a dismissal on the grounds the complaint alleged no cause of action. The decision of the Western District was an erroneous opinion to aid and abet Judge Kaplan's unethical practices.

The Western District's decision relies heavily upon a 1978 decision in Stump v. Sparkman, 435 US 349, 98 S.Ct 1099 which is not on point at all. In Stump v. Sparkman, the Court was one of general jurisdiction and the Court had both subject matter and

jurisdiction over the person who was wronged, unlike the instant case wherein there was no subject matter of personal jurisdiction over Petitioner Blake where evidence of ex-parte conferences were held establishing bias, prejudice and unfairness alleging immoral conduct of members of the County Court.

REASONS FOR GRANTING THE WRIT

This Petition for Certiorari should be granted because the decision of the Court of Appeals for the Third Circuit and the District Court erred in granting a Rule 12 Motion to Dismiss on the grounds of failure to state a claim upon which relief can be granted

when there were facts to support Petitioner's claim. which an unethical judge acted wholly without jurisdiction in collusion with other disobedient parties and county officials.

The trail court erred when it appears that there was a set of facts that Petitioner Blake could provide in support of his claim.

The defendants after they were served with the Complaint. moved to dismiss the complaint pursuant to Rule 12b. Federal Rules of Civil Procedure on the grounds of failure to state a claim upon which relief could be granted. This Motion was granted by the trail court and affirmed by the Court of Appeals.

Trail Court Judge Ziegler erred in refusing to acknowledge the true facts as set forth in Petitioners Brief in the instant action, and instead chose to accept the perjured and false testimony of the defendants. The Court below clearly misapplied the applicable law.

The controlling case is Jenkins v. McKeithen, 395 US 411 (1969), wherein this Court held that a Complaint should not be dismissed unless it appears that Plaintiff could not set forth facts which would entitle him to relief.

> "Motion to dismiss is ordinarily directed in allegations of complaint, an if claim for relief could not conceivable be proved

> there under, motion should not be granted." Kochiacs v. Local Bd. No. 92 C.A. III. (1973), 476 F.2d 557.
>
> "A motion to dismiss may only be granted in the in the clearest of cases, and where additional facts obviously are required before an ultimate judgment may be formed, the motion must fail." Swartz v. Eberly, D.C.Pa. (1962), 212, F.Supp 32.

The Court of Appeals not only misapplied the law in this case, but by its decision made up facts and arguments that were most favorable to the Defendants, who were the moving parties. This was plain error.

As set out in the next assignment of error, there were facts easy to prove that entitled the Petitioner to relief.

The Court of Appeals errored

by failing to apply the plain language of the U.S. Constitution to the facts by holding the offending judge, who was acting without any jurisdiction, as an interloper in a case where there was collusion with the other defendants under the color of law.

In this case, Kaplan ordered the sale of the Petitioners property contrary to the Realestate Laws of Pennsylvania and in collusion violated certain cannon codes. Essentially approving of malicious prosecution and abuse of process because they acted with malice and probable cause to steal the Petitioners property under color of law.

The Supreme Court needs to

exercise caution in terms of the doctrine of judicial immunities any farther than they already exist, see Forrester v. White, 484 US. 108 S. Ct, 98 L.Ed 2d 555 (1988). For a case directly in point on the law see Melo v. Hafer, 912 F. 2d 628 (3rd Cir. 1990), the U.S. Supreme Court, S.Ct. 1991 WL 221067 (U.S.), upheld that public officials are held responsible for their actions.

Even though the court may hold that immunity applied to public officials such protection does not extent to the defendants in this case. And in 42 U.S.C.A. 1983, Shore v Howard, 414 F.Supp. 379 the court was definitive in saying. "There is no judicial immunity to civil actions for equitable relief

under the Civil Rights Act of 1871."

If immunity from liability were granted to anyone or any class of state officials, it would serve to deny the right to redress for wrongs and torts committed under color of law. The very intent of the civil rights act is to insure that their wrongs and torts are actionable. Judges and court officers should be measured by an even more stringent set of rules than ordinary citizens, and by a higher authority.

As stated previously, attorney Garvin had ex-parte conferences with Judge Kaplan and other court officials to violate the constitutional rights of

the petitioner whose attorney was not present.

The issue is one of fairness. The Sixth Amendment of the U.S. Constitution guarantees defendants the right to a fair trail and ex-parte conferences undercut that protection which lead to the conspiracy to steal the petitioners property. In a recent case United States of America v. Gerald Minsky, ---F.2d---, 1992 WL 91330 (6th Cir. Ky.) the court found the ex parte bench conference clearly deprived him of a fair trail and was a Sixth Amendment violation.

The constitution requires that a defendant be represented at every stage of his trail. United

States v. Cronic, 466 U.S. 648, 659. In Haller v. Robbins, 409 F2d 857, 859 (1st Cir. 1969) ("[I]t is improper for the prosecutor to convey information or to discuss any matter relating to merits of the case or sentence with the judge in absence of counsel..") "[N]ot only is it a gross breach of the appearance of justice when the defendants's principal adversary is given private access to the ear of the court, it is dangerous procedure." United States v. Early, 746 F.2d. 412, 416 (8th Cir. 1984), "An ex parte communication between a trail court and government counsel in addition to raising questions of due process... involves a breach of legal and

judicial ethics." The defendants have not afforded no such explanation why the petitioner was denied an opportunity to participate in such proceedings.

As stated in Bivens v. Six Unkown Agents, 403 U.S. 388, 394-395, 29 L.Ed 2d 619, 91 S.Ct. 1999:

> "But it is... well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." Bell v. Hood, 327, US at 684, 90 L.Ed at 911 13 SLR 2d. 383 (footnote omitted)

One of the reasons frequently advanced in support of the doctrine of immunity is to encourage judges and persons involved in the administration of justice to perform their duties

in a more confident manner, in order that they perform their duties without fear of civil suits and liability for every hypothetical error. The instant case, however, does not deal with a reasonable mistake in the handling of a matter before the court. This case amounts to what is little more than extortion under the color of the law. There is no conceivable public policy argument which would support encouraging actions of the sort which have been performed by Judge Kaplan and the other defendants who acted completely without any resemblance of jurisdiction.

- Before the Court concludes automatically that the defendant

Judge Kaplan and Gary Stout are immune from civil damages, the Court must determine that the defendants were acting with jurisdiction, which it can not do. As the Court states in Stump v. Sparkman, supra:

> "The Indiana law vested in Judge Stump the power to entertain and act upon the petition for sterilization. He is therefore, under the controlling cases, immune from damages' liability, even if his approval of the petition was in error."

Stump is distinguished on its facts.

As shown from the facts above set out, there is no resemblance of jurisdiction: subject matter, personal, or otherwise. The ex parte conferences was not ordered to bring the petitioner before the

court for any offences, but for the sole purpose of attempting to force the will of the judge upon the petitioner in order to steal the petitioners property. Judge Kaplan had no jurisdiction in the matter at all.

CONCLUSION

For the foregoing reasons, based upon the facts viewed most favorably to Petitioner, this Petition for Certiorari should be granted.

Dated July 21 1992

Respectfully submitted,

William E. Blake, Petitioner
335 Jefferson St. Apt. B
Brookville, Pa. 15825
(814) 849-5599

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 91-3864 and 91-3881

WILLIAM E. BLAKE,
Appellant in No. 91-3864

v.

HONORABLE JUDGE LAWRENCE KAPLAN; ALLEHENY COUNTY COURT OF COMMON PLEAS; GARY STOUT; HOWARD HANNA INC.; BARRISTERS LAND ABSTRACT CO.; FRED THOMPSON; JOAN M. CALLERY; MARTHA M. BLAKE; FIRM OF GOLDBERG AND KAMIN; ROBERT GARVIN,
Appellant in No. 91-3881

Appeal from the United States District Court for the Western District of Pennsylvania D.C. Civil Action No. 90-01344
(District Judge: Honorable Donald E. Ziegler)

Submitted Under Third Circuit Rule 12(6) April 9, 1992
Before: BECKER, ALITO, ROTH,
Circuit Judges.

JUDGMENT ORDER

After consideration of all contentions raised by appellant,

and essentially for the reasons set forth in the opinion by Judge Ziegler, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby AFFIRMED.

Costs taxed against William E. Blake.

BY THE COURT

s/ Becker

Circuit Judge

Attest:

s/Elizabeth Ferguson

Chief Deputy Clerk

April 23, 1992

Appendix B-31

FOR THE WESTERN DISTRICT OF
IN THE UNITED STATES DISTRICT COURT
OF PENNSYLVANIA

WILLIAM E. BLAKE,
Plaintiff,

v. Civil Action No.90-1344

HONORABLE LAWRENCE KAPLAN, ALLEGHENY COUNTY COURT OF COMMON PLEAS, GARY STOUT, HOWARD HANNA,INC., BARRISTERS LAND ABSTRACT CO., FRED THOMPSON, JOAN M. CALLERY, MARTHA M. BLAKE, FIRM OF GOLDBERG AND KAMIN AND ROBERT GARVIN,
Defendants,

OPINION

ZIEGLER, District Judge.

I.

Plaintiff was a party in a divorce, equitable distribution and child custody proceeding in the Gamil Division of the Court of Common Pleas of Allegheny County, Pennsylvania. He appealed the final decree on the issues of

equitable distribution, alimony, child support and counsel fees. The degree was affirmed. Blake v. Blake, Nos 1205 and 1318 Pittsburgh 1989, slip op. (Pa. Super. October 30, 1990). In that appeal, plaintiff also alleged "various frauds, illegalities and unethical practices by [his] wife's attorneys and the court [and that] the family court system [was] a RICO enterprise." Id. at 2. These latter allegations, however were not addressed by the Superior Court. Id. at 7-8.

Plaintiff, proceeding pro se, commenced the instant action on August 15, 1990, and filed an amended complaint on September 10, 1990, seeking monetary damages (1)

against Judge Lawrence Kaplan, Court of Common Pleas of Allegheny County, Gary Stourt, an officer of that court, and [thereinafter collectively referred to as "private defendants"] Howard Hanna Co., Fred Thompson, Joan M. Callery, Martha M. Blake, the firm of Goldberg and Kamin, and Robert J. Garvin. Plaintiff alleges three theories under which he seeks an award of damages; first, a violation of 42 U.S.C.A. $ 1985 (West 1981); and, third, a violation of the racketeer Influenced and Corrupt Origanization Act (RICO), 18 U.S.C.A. $ 1961 et seq. (West 1984 & Supp. 1991). (2) Plaintiff also asserts a pendent claim for

---

1. Plaintiff later filed, on October 5, 1990, a reply to the judicial defendants' motion to dismiss in which he argued that defendants Judge Kaplan and Stout are not immune from prospective relief. We believe that the abstention doctrine articulated in Younger v. Harris, 401 U.S.37 (1971),and Pennzoil Co. v. Texaco, Inc., 481 U.S.1 (1987), mandaates that we abstain from this action in so far as it seeks prospective relief. We note that divorce, equitable distribution and custody proceedings involve intrests that "are so important that the exercise of the federal judical power would disregard the comity between the States and the National Government." Pennzoil, 481 U.S. at 11. Moreover, the decisions of the Famil Division are appealable to the Superior Court of Pennsylvania, an avenue plaintiff has already pursued. Accordingly, we will abstain from decidin plaintiff's claims for prospective relief against these defendants and will dismiss them.

2. The amended compalint is unclear as to which cause of action is asserted against the individual defendants. For the prupose of these motions, we will assume that plaintif has asserted a claim against every defendant under each

of the three theories. In addition, the amended compaint alleges a caused of action under 42 U.S.C.A. $ 1986 (West 1981). Given our disposition concerning the $ 1985 claim and the derivative nature of $ 1986 thereon, see infra n.5, we will also dismiss any claim arising under $ 1986.

inflection of emotional distress and seeks an award of attorneys' fees under U.S.C.A. $ 1988 (West 1981). Defendants have filed motions to dismiss the amended complaint pursuant to Fed.R.Civ.P. 12(b)(6) and motions for sanctions pursuant to Fed.R.Civ.P. 11. We construe the amended compaint in the light most favorable to plaintiff and can dismiss the amended compaint only if the plaintiff has alleged no set of facts under which relief could be granted. Banks v. Wolk, 918 F.2d

418, 419 (3rd Cir. 1990). For the reasons set forth below, the motions to dismiss will be granted.

II. Section 1985 Claim

William Blake has failed to make clear the subsection of § 1985 which provides a cause of action for the wrongs that he has alleged. (3) Plaintiff's brief, filed on January 15, 1991, makes passing reference to both subsections (2) and (3). (4)

3. Plaintiff nowhere alleges a claim under § 1985 (1). Even if he intends to pursue such a claim, that provision is inapplicable as it pertains only to interference with federal officers.

4. The second cause of § 1985 (2) provides: ... [I]f two or more persons conspire for the purpose of impeding, hindering, obstructiong, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any to any citizen the equal protection of the laws, or to

injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws an action at law will lie. 42 U.S.C.A. $ 1985(2) (West 1981). Section 1985(3) provides in pertinent part: If two or more persons in any State or Territory conspire... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws...[and] in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United State, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury of deprivation, against any one or more of the conspirators. 42 U.S.C.A. $ 1985(3) (West 1981).

(Plaintiff's Brief at 13, 63 respectively). For the following reasons, defendants' motions to dismiss for failure to state a

claim under either of these subsuctions will be granted with prejudice. Claims under $ 1985(3) require allegations of "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). See also United Bhd. of Carpenters & Jointers v. Scott, 463 U.S. 825, 834-38 (1983). The Court of Appeals has held that this requirment also applies to actions under the second clause of $ 1985(2). Brawer v. Horowitz, 535 F.2d 830,840 (3rd Cir. 1976). Because plaintiff has made no such allegations, the amended complaint fails to state a claim under 42

U.S.C.A. $ 1985. (5) We will grant defendants' motions to dismiss any claim relying upon these provisions.

III. Section 1983 Claims

A. Claim against the Court of Common of Allegheny County

Defendant Court Common Pleas of Allegheny County has moved to dismiss the $ 1983 (6) claim for failure to state a claim. It properly asserts that it is immune from suit for monentary damages under $ 1983. The court is an arm of the state for purposes of the Eleventh Amendment. See Mattas v. Supreme Court of Pennsylvania, 576 F.Supp. 1178, 1182, (W.D.Pa. 1983). Moreover, because the court is an arm of the state, it is not a "person" within the meaning of

$1983. Will v. Michigan Dept. of State Police. 491 U.S. 58, 64 (1989). Thus, defendant Court of Common Pleas' motion to dismiss the $ 1983 claim will be granted.

B. Claims against Judge Kaplan and Gary Stout when sued for retrospective monetary damages, are likewise not persons within the meaning of $ 1983. Id. at 71 & n.10. In addition, under the doctrines of judicial immunity, defendants Judge Kaplan and Gary Stout are immune from liability for damages. Judges are afforded protection under the doctrine of judicial immunity because, as the Suppreme Court has recognized in a related context, the "loser in one forum will frequently seek another, charging

the participants in the first with unconstitutional animus," Butz v. Economou, 438 U.S. 478, 512 (1978). Judicial immunity applies "whether the judicial action was in error, was done maliciously, or was in excess of his authority." Stump v. Sparkman, 435 U.S. 349, 356 (1978), reh'g denied 436 U.S. 951 (1979). See also Pierson v. Ray, 386 U.S. 547, 554 (1967)("This immunity applies even when the judge is accused of acting maliciously and corruptly").

A judge is subject to liability only when he has acted in the "clear absence of all jurisdiction." Stump, 435 U.S. at 356-57. We find nothing in the pleadings that leads us to conclude that Judge Kaplan acted in

a manner that could be deemed in the "absence of all jurisdiction." Plaintiff's allegations relate solely to the divorce proceedings. The judges of the Courts of Common Pleas have broad judicial powers, including original jurisdiction of all actions and proceedings such as those involving divorce and equitable distribution. Pa. Const. Art. V. $5(b); 42 Pa.C.S.A. $ 931 (1981). Accordingly, we hold that Judge Kaplan is immune from liability for damages under $ 1983 and we will dismiss the claim against him.

Defendant Stout is also immune from liability for damages. The averments in the amended complaint relate to actions that were

undertaken in defendant's capacity as a master of the equitable distribution proceeding. As such, Stout was acting in a judicial capacity. We find nothing in the pleadings which leads us to conclude thet defendant Stout has lost the protection of judicial immunity. See, e.g., Humphrey v. Court of Common Pleas of York County, 640 F. Supp. 1239 (M.C.Pa. 1986) (dismissing $ 1983 damage claim against judges, masters and other judicial officers of court of common pleas under doctrine of jucicial immunity). We will dismiss the damage claim under $ 1983 against defendant Stout.(7)

---

7. Our holding concerning the judicial immunity of defendants Judge Kaplan and Stout for damages under $ 1983 is applicable to the

RICO claims asserted in the amended complaint. We will therefore dismiss the RICO claims against these two defendants.

C. Claim against Private Defendants

The amended complaint also asserts a damage claim under $ 1983 against several private defendants-- Howard Hanna Co., Barristers Land Abstract Co., Fred Thompson, Joan M. Callery, Martha M. Blake, the law firm of Goldberg and Kamin, and Robert J. Garvin. To be actionable under $ 1983, an act must have been committed under state law." "Private persons, jointly engaged with immune state officials in the challanged action, are acting "under color" of law for the purposes of $ 1983 actions." Dennis v. Sparks, 449 U.S. 24, 27-28 (1980).

Defendants argue that the $ 1983 action should be dismissed as to them because the amended compaint fails to state a claim. More specifically, they argue that the amended complaint fails to meet the specificity requirements set forth by the Third Circuit Court of Appeals. See Ross v. Megan, 638 F.2d 646, 650 (3d Cir. 1981); Rotolo v. Borough of Charleroi, et al., 532 F.2d 920, 923 (3d Cir. 1976).

In Darr v. Wolf, 767 F.2d 79, 80-81 (3rd Cir. 1985), the Court of Appeals noted:

> [I]t is settled in this circuit that a civil rights complaint under $ 1983 must set forth with factual specificity the conduct of the defendants alleged to have harmed the plaintiff...Moreover, allegations against a judge

> supplying the necessary state action in a ivil rights suit under $ 1983 should be specially specific in order that purely private action may not be converted in to state action merely by including the judge as a defendant in the action. (citations omitted).

Plaintiff's pleadings, including the lengthy reply, are lacking in specific facts to support the vage and conclusory allegations that the private defendants allegedly conspired withe the judicial officers of the Family Division to deprive plaintiff of constitutionaly protected rights. See Del Signore v. City of McKeesport, 680 F.Supp. 200, 203 (W.D.Pa. 1988), aff'd 877 F.2d 54 (table). We hold that the amended complaint and reply are insufficient to state a claim upon which relief can be granted.

Furthermore, we recogonize that a pro se plaintiff should be granted leave to satisfy the pleading requirements of a $ 1983 claim. Rotolo, 532 F.2d at 923. However, under theses circumstances, where plaintiff has filed a complain and an amended compaint, and, in response to defendants' motions to dismiss, has filed a reply brief and case statement, all of which are insufficient to withstand the motions, we hold that leave to amend would be futile. We wil grant private defedants' motions to dismiss the $ 1983 claim.

IV. RICO CLAIM

Plaintiff has also asserted RICO claims against defendants pursuant to 18 U.S.C.A. $ 1964(c)

(West 1984).(8) Once again, it is unclear under which section or sections plaintiff whishes to proceed. Plaintiff explicity refers to $ 1962(a) (9) in his case statement an $$ 1962(b) (10) and 1962(c) (11) in his reply brief. Although not specifically refeffed to in the pleadings, plaintiff implies a claim un $ 1962(d). (12)

8. Section 1964(c) provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C.A. $ 1964(c) (West 1984).

9. RICO Case Statement at 1 & 12. Subsection (a) Provides:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or

> through collection of an unlawful debt in which such person has participated as principle within the meaning of section 2, title 18, United States Code, to use or invest, directly or inderectly, any part of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce.

18 U.S.C.A. $ 1962(a) (West 1984).

10. Plaintiff's reply brief at 43. Subsection (b) provides:

> It shall be unlawful for any for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maitain, directly or indirectly, any interest or control of any enterprise which is engagedin, or the activities of which affect, interstate or foreiegn commerce.

18 U.S.C.A. $ 1962(b) (West 1984).

11. Plaintiffs Reply Brief at 25 & 63. Subsection (c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreigh comerce, to conduct or participate, directly or

> indirectly, in the conduct or conduct of such enterprise's affairs through a pattern or racketeering activity or the collection of unlawful debt.

18 U.S.C.A. $ 1962(c) (West 1984).

12. Subsection (d) provides:

> It shall be unlawful for any person to conspire to violate any of the provisions of Subsection (a), (b), or (c) of this section.

18 U.S.C.A. $ 1962(d) (West 1984 and Supp. 1991).

be read to allege that the individual defendants are persons (13) within the meaning of RICO who have conspired and conducted the affairs of the enterprise (14) (the Famil Division :of the Court :of Common Pleas of Allegheny County) in violation of $ 1962(c). Although $ 1962(a) is specially referenced by plaintiff, we find that it is inapplicable to the allegations before the court. Plaintiff has made no allegation

that any of the defendants used or invested income derived from a racketeering enterprise to acquire an interest in or establish an enterprise. Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1165 (3rd Cir. 1989). Moreover, no injury resulting from such use or investment has been alleged. Rose v. Bartle, 871 F.2d 331, 357-58 (3rd Cir. 1989). See also Brittingham v. Mobil Corp., Nos. 90-1989 etc., slip op. at 16 & 17 (3rd Cir. August 23, 1991) (" This provision was primarily directed at halting the imvestment of racketeering proceeds into ligitimate business, including the practice of money laundering").

Similarly, although $ 1962(b) is specifically referred to by

plaintiff, the pleadings are lacking in any factual allegations that defendants have acquired or maintained control of the enterprise within the ambit of $ 1962(b). See Shearin, 885 F.2d at 1168 n.2. (Plaintiff must allege a specific "nexus between control of the enterprise and the alleged racketeeringactivity."). Consequently, the general allegations implicate $$ 1962(c) and (d) as the only available bases of liability.

---

13. 18 U.S.C.A. $ 1961(3) (West 1984).

14. 18 U.S.C.A. $ 1961(4) (West 1984).

A. Court of Common Pleas

Eleventh Amendment immunity "can be avoided in only two ways: (a) Congress can abrogate it by providing through statue for suits against states, or (b) states can waive their soverign immunity and consent to be sued. " United States v. Union Gas Co., 832 F.2d 1343, 1346 (3rd Cir. 1987), aff'd sub nom., Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989). As to the latter avenue, Pennsylvania has specifically withheld consent. See 42 Pa.C.S.A $ 8521(b) (1982).

Congress clearly has the authority to limit or abrogate a state's Eleventh Amendment immunity when it acts pursuant to $ 5 to enforce the Fourteenth Amendment. Fitzpatrick v. Bitzer, 427 U.S.

445, 456 (1976). congress may even abrogate this immunity when legislating pursuant to the Commerce Clause. See Pennsylvania v. Union Gas Co., 491 U.S. 1, 23 (1989). In either situation, however, the Supreme Court has stated that Congress must express its intention to abrogate the Eleventh Amendment in "unmistakable language in the statute itself." Atascadaro State Hospital v. Scanlon, 473 U.S. 234, 243 (1985).

In Fiore v. Kelly Run Sanitation, Inc., we stateed that "there is nothing inherent in [the RICO] statutes to provide for Congressional abrogation of Eleventh Amendment immunity." 609 F. Supp. 909, 913-14 n.1 (W.D.Pa. 1985). Thus, the Court of Common

Pleas, as an arm of the state, is constitutionally immune from a RICO damage claim. Moreover, as plaintiff has named the Court of Common Pleas as the RICO enterprise, it cannot at the same time be a defendant in an action under § 1962(c). See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1411 (3d Cir. 1991) and Brittingham, slip op. at 8. Additionally, because it cannot be a defendant in an action under § 1962(c), the Court of Comon Pleas cannot be held liable under a respondeat superior theory, See Petro-Tech, Inc. v. Wester Co. of N.Am., 824 F.2d 1349, 1359 (3d Cir. 1987). The RICO claim against the Court of Common Pleas will be dismissed.

B. Claims against Private Defendants

We now direct our attention to the $$ 1962(c) and (d) claims against the private defendants. In Averbach v. Rival Mfg. Co., 809 F.2d 1016, 1018 (3d Cir. 1987), cert. denied, 482 U.S. 915 (1987) and 484 U.S. 822 (1987), the Court of Appeals stated:

> In those cases in which courts have been recogonized as RICO enterprises...the participants engaged in patterns of activities designed to corrupt the operation of the court's own processes. Whereas litigants before courts call upon courts to exercise the judicial process, they do not participate init in the sense intended by Congress in 18 U.S.C. $ 1962(c) (1982). Such litigaants do not share with the court's personnel a common purpose with respect to the activity complained of.

Clearly, the Averbach decision mandates that we dismiss the RICO

claim against defendant Martha Blake, plaintiff's ex-wife and a litigant in the underlying proceedings, for failure to state a claim upon which relief could be granted. Because we conclude that the rational in the Averbach decision, that is, the dichotomy of purpose between court employees and litigants, applies equally to the other private defendants who are not court personnel, we will dismiss the substantive claim under $ 1962(c) against these defendants.

Implicit in plaintiff's allegations is a claim that defendants also violated $ 1962(d). In Shearin v. E.F. Hutton Group, Inc., 885. F.2d 1162, 1168-70 (3d Cir. 1989), the Court of Appeals sustained a $ 1962(d) claim in the

absence of a viable claim under any of the substantive subsections of $ 1962. In Shearin, however, the plaintiff alleged a separate injury from conduct violating $ 1962(d). Here, plaintiff merely alleges that defendants "conspired to violate the provisions of 18 U.S.C $ 1962 thus violating the provision of 18 U.S.C. $ 1962." (15) Because plaintiff has made no allegation of injury independent of any alleged violations of $ 1962(a)-(c), we will also dismiss the claim under $ 1962(d). See, e.g., Penn v. Alamo-Renta-a-Car, Inc., 725 F.Supp. 1339, 1348-49 (E.D.Pa. 1989).

---

15. RICO Case Statement at 20.

V. Miscellaneous

Plaintiff has requested an award of attorney's fees pursuant to 42 U.S.C.A. $ 1988 (West 1981). Because plaintiff is not an "prevailing party" within the meaning of the statute, the request will be denied. Furthermore, because we find no extraordinary circumstances requiring retention of plaintiff's state law claim, we decline to exercise jurisdiction. Tully v. Mott Supermarkets, Inc., 540 F.2d 187, 196 (3d Cir. 1976) (citing United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966)).

Defendants' have moved for sanctions pursant to Rule 11 of the Federal Rules of civil Procedure. Because we find the imposition of sanctions is unwarranted in this

case, we will deny the motion.

A written order will follow.

DATED: October 24, 1991

S/ Donald E. Ziegler
United States District Judge

cc: Counsel of record

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 90-1344

WILLIAM E. BLAKE,
Plaintiff,

v.

HONORABLE LAWRENCE KAPLAN, ALLEGHENY COUNTY COURT OF COMMON PLEAS, GARY STOUT, HOWARD HANNA, INC., BARRISTERS LAND ABSTRACT CO., FRED THOMPSON, JOAN M. CALLERY, MARTHA M. BLAKE, FIRM OF GOLDBERG AND KAMIN AND ROBERT J. GARVIN,
Defendants.

ORDER

AND NOW, this 24th day of October 1991, after consideration of the submissions of the parties;

IT IS ORDERED that defendants's motions to dismiss plaintiff's original and amended compaint be and hereby are granted.

IT IS FURTHER OREDERD that defendants' motions for sanctions be and hereby are denied.

IT IS FURTHER ORDERED that plaintiff's request for attorney's fees be and hereby denied.

IT IS FURTHER ORDERED that plaintiff's pendent state claim be and hereby is dismissed.

S/ Donald E. Ziegler
United States District Judge

cc: Counsel of record

AFFIDAVIT OF FILING AND SERVICE

I, William E. Blake, do swear and declare that on this date, July 21, 1992, pursuant to Supreme Court rules 29.3 and 29.4, I have served the attached Petition for Certiorari on each party to the proceedings and on every other person required to be served by depositing in the U.S. mail properyly addressed to each of them with first class postage prepaid. The names and addresses of those served are as follows:

A. Taylor Williams
1515 Market St
Suite 1414
Philadelphia, Pa. 19102

Stacey F. Vernallis
Petragallo Bosick & Gordan
13th Floor, One Oxford Center
Pittsburgh, Pa. 15219

Samuel P. Kamin
Goldberg and Kamin
1408 Law and Finance Building
Pittsburgh, Pa. 15219

William E. Blake

Subscribed and Sworn to Before Me
this 28TH day of July 1992.

Jo Ann Smith

NOTARIAL SEAL
JO ANN SMITH, NOTARY PUBLIC
ROSE TOWNSHIP, JEFFERSON COUNTY
MY COMMISSION EXPIRES OCT. 26, 1992
Member, Pennsylvania Association of Notaries